

Part 4

Voluntary Request for Resource Decision Review

54-17-401 Definitions.

As used in this part:

- (1) "Energy utility" means one of the following with 200,000 retail customers in the state:
 - (a) an electrical corporation; or
 - (b) a gas corporation.
- (2)
 - (a) "Resource decision" means a decision, other than a decision to construct or acquire a significant energy resource, involving:
 - (i) an energy utility's acquisition, management, or operation of energy production, processing, transmission, or distribution facilities or processes including:
 - (A) a facility or process for the efficient, reliable, or safe provision of energy to retail customers; or
 - (B) an energy efficiency and conservation program; or
 - (ii) a decision determined by the commission to be appropriate for review under this part.
 - (b) The commission may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to specify the nature of resource decisions subject to approval under Section 54-17-402.

Amended by Chapter 382, 2008 General Session

54-17-402 Request for review of resource decision.

- (1) Beginning on February 25, 2005, before implementing a resource decision, an energy utility may request that the commission approve all or part of a resource decision in accordance with this part.
- (2)
 - (a) To obtain the approval permitted by Subsection (1), the energy utility shall file a request for approval with the commission.
 - (b) The request for approval required by this section shall include any information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) In ruling on a request for approval of a resource decision, the commission shall determine whether the decision:
 - (a) is reached in compliance with this chapter and rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (b) is in the public interest, taking into consideration:
 - (i) whether it will most likely result in the acquisition, production, and delivery of utility services at the lowest reasonable cost to the retail customers of an energy utility located in this state;
 - (ii) long-term and short-term impacts;
 - (iii) risk;
 - (iv) reliability;
 - (v) financial impacts on the energy utility; and
 - (vi) other factors determined by the commission to be relevant.
- (4)

- (a) If the commission approves a proposed resource decision only in part, the commission shall explain in the order issued under this section why the commission does not approve the resource decision in total.
- (b) Recovery of expenses incurred in connection with parts of a resource decision that are not approved is subject to the review of the commission as part of a rate hearing under Section 54-7-12.
- (5) The commission may not approve a resource decision in whole or in part under this section before holding a public hearing.
- (6) Unless the commission determines that additional time to analyze a resource decision is warranted and is in the public interest, within 180 days of the day on which the energy utility files a request for approval, the commission shall:
 - (a) approve all or part of the resource decision;
 - (b) approve all or part of the resource decision subject to conditions imposed by the commission; or
 - (c) disapprove all or part of the resource decision.
- (7) The commission shall include in its order under this section:
 - (a) findings as to the approved projected costs of a resource decision; and
 - (b) the basis upon which the findings described in Subsection (7)(a) are made.
- (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for approval of a resource decision under this section.

Amended by Chapter 382, 2008 General Session

54-17-403 Cost recovery.

- (1)
 - (a) Except as otherwise provided in this section, if the commission approves any portion of an energy utility's resource decision under Section 54-17-402, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:
 - (i) relevant to that proceeding;
 - (ii) incurred by the energy utility in implementing the approved resource decision; and
 - (iii) up to the projected costs specified in the commission's order issued under Section 54-17-402.
 - (b) Except to the extent that the commission issues an order under Section 54-17-404, any increase from the projected costs specified in the commission's order issued under Section 54-17-402 shall be subject to review by the commission as part of a rate hearing under Section 54-7-12.
- (2)
 - (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i) or (ii), the commission may disallow some or all costs incurred in connection with an approved resource decision if the commission finds that an energy utility's actions in implementing an approved resource decision are not prudent because of new information or changed circumstances that occur after:
 - (i) the commission approves the resource decision under Section 54-17-402; or
 - (ii) the commission issues an order to proceed under Section 54-17-404.
 - (b) In making a determination of prudence under Subsection (2)(a), the commission shall use the standards identified in Section 54-4-4.

- (3) Notwithstanding any other provision of this chapter, the commission may disallow some or all of the costs incurred by an energy utility in connection with an approved resource decision upon a finding by the commission that the energy utility is responsible for a material misrepresentation or concealment in connection with an approval process under this chapter.

Enacted by Chapter 11, 2005 General Session

54-17-404 Order to proceed.

- (1)
- (a) In the event of a change in circumstances or projected costs, an energy utility may seek a commission review and determination of whether the energy utility should proceed with the implementation of an approved resource decision.
 - (b) In making a determination under this Subsection (1), the commission shall use the standards identified in Subsection 54-17-402(3)(b).
 - (c) Before making a determination under this Subsection (1) the commission:
 - (i) may hold a public hearing; and
 - (ii) shall provide an opportunity for public comment.
- (2) Unless the commission determines that additional time is warranted and is in the public interest, within 60 days of the day on which the energy utility files a request for commission review and determination under this section, the commission shall:
- (a) issue an order:
 - (i) determining that the energy utility should proceed with the implementation of the resource decision;
 - (ii) making findings as to the total projected costs of the approved resource decision; and
 - (iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are made; or
 - (b) issue an order determining that the energy utility should not proceed with the implementation of the resource decision.
- (3) If the commission determines that the energy utility should proceed with the implementation of the approved resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:
- (a) relevant to that proceeding;
 - (b) incurred by the energy utility in implementing the approved resource decision; and
 - (c) up to the projected costs as specified in the commission's order issued under Subsection (2)(a).
- (4) If the commission determines that the energy utility should not proceed with the implementation of the approved resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:
- (a) relevant to that proceeding; and
 - (b) incurred by the energy utility in implementing the approved resource decision before issuance of a determination not to proceed, including any prudently incurred costs of terminating the approved resource decision.
- (5) A commission order under this section not to proceed with the implementation of a resource decision may not prejudice:
- (a) the right of an energy utility to:
 - (i) continue to implement the resource decision; and

- (ii) seek recovery of costs incurred after a determination not to proceed in a future rate proceeding; or
 - (b) the right of any other party to support or oppose the recovery sought under Subsection (5)(a)(ii).
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for the commission's review and determination on a request for an order to proceed under this section.

Amended by Chapter 382, 2008 General Session